

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Petition for Interim Suspension Order
Against:**

GREGORY CASTILLO, M.D., Respondent

Agency Case No. 800-2019-058598

OAH No. 2021070806

ORDER ON PETITION FOR INTERIM SUSPENSION

On August 13, 2021, the petition of William Prasifka (Petitioner), Executive Director of the Medical Board of California (Board), Department of Consumer Affairs, for issuance of an Interim Suspension Order pursuant to Government Code section 11529, was heard via videoconference by Julie Cabos-Owen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). Vladimir Shalkevich, Deputy Attorney General, represented Petitioner. Benjamin Fenton, Attorney at Law, with Fenton Law Group, LLP, represented Gregory Castillo, M.D. (Respondent).

The ALJ read and considered all filed papers supporting and opposing the Petition, and the ALJ heard argument made by the parties at the noticed hearing. The matter was submitted on August 13, 2021.

FACTUAL FINDINGS

1. Petitioner filed the Petition while acting in his official capacity as the Executive Director of the Board.
2. On July 20, 1994, the Board issued Physician's and Surgeon's Certificate Number A 53294 to Respondent. Respondent's certificate is scheduled to expire on August 31, 2023.
3. On August 7, 2019, the Board received a Health Facility / Peer Review report form, as required by Business and Professions Code section 805 et seq. (805 Report). The 805 Report informed the Board that, on July 29, 2019, Facey Medical Group (Facey) voted to terminate Respondent's privileges. The termination was prompted by Facey's investigation of a complaint submitted by a patient.
4. Respondent resigned his privileges on or about August 2, 2019, before he was formally notified of the termination of his privileges.
5. On August 28, 2019, after Respondent's privileges were terminated and a Board investigation had been opened, Facey contacted Board investigators and informed them Facey was made aware of another complaint against Respondent.
6. The Board's subsequent investigation revealed Respondent's inappropriate interactions with three patients. The facts regarding Respondent's

conduct with the three victims are set forth in Factual Findings 7 through 9, below, and are established for purposes of this proceeding only.¹

7A. Patient 1,² a male who was 47 years old at the time, saw Respondent several times. At Patient 1's final visit on October 2, 2013, Respondent examined Patient 1 while he was lying supine on the examination table. Respondent palpated Patient 1 near his waist. Respondent then pulled down Patient 1's pants and underwear, placed his mouth on Patient 1's penis, and orally copulated Patient 1. Patient 1 was alarmed and pushed Respondent away from him, yelling in Spanish: "What are you doing?!" Respondent told Patient 1 he was examining him and attempted to again orally copulate Patient 1. Patient 1 pushed Respondent away, got off the examination table, and walked out of the examination room. Patient 1 then informed the front office staff about what had happened. Patient 1 did not return to see Respondent.

7B. Many months later, Patient 1 was contacted and interviewed by Facey staff at their office in Mission Hills. Due to his embarrassment, Patient 1 did not pursue the matter further.

¹ Pursuant to Government Code section 11529, subdivision (d)(3), the findings herein are based on "written evidence in the form of relevant declarations, affidavits, and documents."

² Victims are identified by number to protect their privacy.

8A. Patient 2, a male who was approximately 25 years old at the time, was seen by Respondent several times. His last two visits were on March 22, 2019, and May 28, 2019. At the March 22, 2019 visit, Patient 2, complained of unintended weight loss. Respondent ordered laboratory screening for Patient 2 to rule out sexually transmitted diseases.

8B. Patient 2 returned to see Respondent on May 28, 2019. During that appointment, Respondent behaved in a manner that made Patient 2 feel physically violated and distraught. When greeting Patient 2, Respondent rubbed the patient's knee and shoulder. During the physical examination, Respondent placed a stethoscope on Patient 2's chest while standing directly in front of Patient 2, who was seated on the examination table. Respondent rubbed his genitals against Patient 2's knees, and Patient 2 felt Respondent develop an erection as he was rubbing his genitals against Patient 2's knees.

8C. Respondent then instructed Patient 2 to lie down on the examination table, face up. Respondent pulled Patient 2's examination gown down and examined the patient's abdomen with his bare hands. Respondent then folded the gown down below the patient's pelvic area and examined Patient 2's genital area without wearing gloves. Patient 2 recounted: "He was examining my penis and testicles in a way I've never encountered. He was pulling my penis to the point of fondling." (Declaration of Patient 2, para. 6.)

8D. Respondent then had Patient 2 stand up for a further genital exam. After donning examination gloves, Respondent pulled and fondled Patient 2's penis. Respondent then instructed Patient 2 to bend over, and after Patient 2 complied, Respondent conducted a rectal exam of Patient 2 without a prior explanation of what he was about to do.

8E. After the visit with Respondent, Patient 2 felt uneasy. He wrote a letter to Respondent with a copy to Facey, stating in pertinent part:

Good afternoon Dr. Castillo,

I am writing you to let you know how uncomfortable I was left feeling after our appointment on Tuesday May 28th, 2019. Since leaving, I have been going back and forth in my head whether or not I should speak out about it, and have much regret that I did not stand up for myself during the incidents. I felt that you were quite touchy and over the top with me, especially for a normal physical exam, an exam that I have been receiving routinely my entire life, and have never left feeling even remotely close to what I am feeling now. I am unaware of your sexual preference, and would be the last person to care. However, while examining me I felt it was completely unnecessary to do a number of things in which you did. Things that in the moment, made me feel uncomfortable, and while looking back at them, make me feel even more uneasy. I believe people let these things happen in the moment because they place their trust in people who hold the title of such a prestigious profession. However, you were doing exams such a chest exam and were clearly pressing your genitals up against my leg and knee area. I felt that this was an exam well in arms reach and did not require you to be anywhere remotely that close to me to perform. The constant placing your hand on my

knee and shoulder. The ungloved examination of my genitals while I was lying on my back. Which again, never in my 25 years has a doctor performed a genital check on me whilst I lay on the table. This type of exam has only happened while the doctor has protected his/her hands with gloves, and I am standing in the upright position. Immediately following, when I did arise into the upright position, you did a second examination of my genitals and stayed in the penile region for what I, and any average reasonable person would have considered to be uncomfortably long. This uncomfortable exam was followed by another one where you examined my prostate anally. Yet another exam with which I have never received at a physical, or heard of being part of procedure for a 25 year old male. . . .

[I] am contacting you today to inform you that 1. I will certainly not be at our follow up appointment on July 9th and will not be continuing with you as my General Practitioner, and 2. I will be notifying Facey Human Resources to let them know of the instances that have left me uncomfortable. I do not wish any ill harm to you or your career, but do feel that you have an integral and ethical obligation to uphold as a doctor. If this commitment cannot be honored by you, then I hope me coming forward serves as prevention of no other person; Man, Woman, or Child leaves your office feeling the way I did.

Your former patient,

[Patient 2]

(Declaration of Patient 2, para. 11.)

9A. On June 4, 2019, at approximately 12:00 noon, Patient 3, a 19-year-old male, saw Respondent for a physical examination. It was his first visit at Facey.

9B. Respondent performed a physical examination with Patient 3 initially sitting on the examination table. The physical examination included use of a stethoscope, after which Respondent used his bare hands to touch Patient 3's chest and stroke his nipples.

9C. Respondent then instructed Patient 3 to stand on the floor for a genital examination. Respondent conducted the genital examination without wearing gloves. During the examination, Respondent touched and stroked Patient 3's penis for more than a minute. Patient 3 found it strange that Respondent examined his penis because he had not expressed any complaints about his genitals.

9D. During the examination, Respondent asked Patient 3 if he engaged in sex with males, and Patient 3 answered in the affirmative. Patient 3 also observed Respondent had developed an erection. Respondent asked Patient 3 if Patient 3 would like to go to Respondent's house. Patient 3 declined because he had a test at school that evening. Patient 3 invited Respondent to his house instead.

9E. After Patient 3 left Respondent's office, Respondent sent Patient 3 a text message at approximately 1:00 p.m., using the cellular telephone number Respondent had obtained from Patient 3's medical chart. (Exhibit E, Sept. 25, 2020 Board interview of Respondent, p. 28, lines 23-25.) Respondent's text message to Patient 3 stated, "It

was nice meeting you today, text me back to make sure that you received this and I have the right number." The patient texted back, "Who are you?" and Respondent texted, "Dr. Castillo." (Declaration of Patient 3, Exhibit A.) Patient 3 texted, "[I]t's was nice to meeting you too. Thanks for that my dick it was so happy. I can't wait to see you tonight." (*Ibid.*) Respondent asked, "What time should I stop by?" (*Ibid.*) Patient 3 informed Respondent he would get out of school at 6:20 p.m. and asked if Respondent could pick him up there. Respondent agreed. Patient 3 then texted: "Do you want to have sex with me only one time? Or do you want have sex with me more then once." (*Ibid.*) Respondent replied by text message: "Let's meet today and see how things go but I have a feeling I'm gonna want to do it again." (*Ibid.*)

9F. Later that evening, Respondent drove his Toyota Tacoma truck to pick up Patient 3 from Golden Oak Adult School. They went to Patient 3's apartment where they engaged in sexual activity.

9G. Board investigators interviewed Respondent on April 3, 2020, and September 25, 2020. In his September 25, 2020 interview, Respondent admitted entering Patient 3's apartment on June 4, 2019, but denied engaging in sexual activity with Patient 3. Based on the totality of the evidence, including the text messages sent by Patient 3 and Respondent, this denial is not credible.

10. During his April 3, 2020 Board interview, Respondent stated he was working as a physician with Care More Medical Group in Downey, providing coverage for physicians at several locations.

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LEGAL CONCLUSIONS

1. An administrative law judge may issue an interim order "suspending a license, imposing drug testing, continuing education, supervision of procedures, limitations on the authority to prescribe, furnish, administer, or dispense controlled substances, or other license restrictions." (Gov. Code, § 11529, subd. (a).)

2. "Interim orders may be issued only if the affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Medical Practice Act . . . or is unable to practice safely due to a mental or physical condition, and that permitting the licensee to continue to engage in the profession for which the license was issued will endanger the public health, safety, or welfare." (Gov. Code, § 11529, subd. (a).)

3. An administrative law judge "shall grant the interim order if, in the exercise of discretion, the administrative law judge concludes that: (1) There is a reasonable probability that the petitioner will prevail in the underlying action; [and] (2) The likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order." (Gov. Code, § 11529, subd. (e).)

4. The affidavits in support of the Petition established that Respondent engaged in acts constituting violations of the Medical Practice Act (i.e., sexual misconduct, in violation of Business and Professions Code, sections 726 and 729; and general unprofessional conduct, in violation of Business and Professions Code, section 2234).

5. Respondent argued that the standard of proof in this matter is "clear and convincing evidence," citing *Silva v. Superior Court* (1994) Cal.App.4th 562. However,

the notes under Government Code section 11529 state, "It is the intent of the Legislature to substitute the standard governing the issuance of a preliminary injunction under Section 527 of the Code of Civil Procedure for the 'clear and convincing evidence' standard as the standard for granting an interim order pursuant to Section 11529 of the Government Code, and to this extent the decision of the Court of Appeal in *Silva v. Superior Court* . . . is expressly overturned. It is also the intent of the Legislature that the standard of proof applicable to an accusation filed in connection with a petition for interim order shall continue to be clear and convincing evidence."

6. There is a reasonable probability that Petitioner will prevail in the underlying action (i.e., that Petitioner will be able to establish violations of the Medical Practice Act).

7A. Given the egregious nature of Respondent's actions, the likelihood of injury to the public in not issuing an interim suspension order outweighs the likelihood of injury to the licensee in issuing such an order.

7B. Respondent argued the interval of time between the Board investigative interviews (in 2019 through September 2020) and the filing of the Petition (in July 2021) contradicts the likelihood of harm prompting the need for an interim order of suspension. However, as Petitioner noted, the delay was not unreasonable given the need for a thorough investigation, including expert opinions, to corroborate the serious allegations before charges were brought. As Petitioner also pointed out, Government Code section 11529, subdivision (f), sets an expedited deadline for filing an Accusation after issuance of an interim suspension order (i.e., within 30 days of the petition hearing), or the interim suspension order will automatically dissolve. Consequently, the investigation was completed contemporaneous with filing of the

Petition to ensure timely filing of the Accusation. Moreover, the thorough investigation to confirm the serious allegations did not reduce the likelihood of injury to the public if Respondent were allowed to continue practicing medicine and engaging in inappropriate behavior. Given the foregoing, Respondent's assertion of delay affecting the likelihood of harm is unpersuasive.

8. Respondent also argued that a full order of suspension is unwarranted. Instead, Respondent asserted that an order requiring the presence of a chaperone during patient examinations would sufficiently protect the public. This argument is not compelling. While a chaperone may reduce some instances of obviously inappropriate behavior, such as ungloved genital examinations, this requirement neglects to address Respondent's out-of-office behavior. In this case, Respondent contacted a patient outside of the office using the cellphone number obtained from the patient's medical chart. A chaperone cannot monitor such actions, and there is no mechanism for out-of-office oversight. A physician should be trusted to access patient charts without using information in them for his own purposes. However, Respondent used both the patient chart and the examination room to facilitate his inappropriate behavior. Given the foregoing, a chaperone would not provide adequate public protection.

9. Based on the evidence and the argument presented at the noticed hearing, the issuance of the Order below is warranted at this time.

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ORDER

1. The Petition for Interim Order of Suspension is granted.
2. Physician's and Surgeon's Certificate Number A 53294, issued to Respondent, Gregory Castillo, M.D., is hereby suspended pending a full administrative determination of Respondent's fitness to practice medicine.
3. Respondent shall not:
 - a. Practice or attempt to practice any aspect of medicine in California until the final decision of the Board following an administrative hearing;
 - b. Be present in any location which is maintained for the purpose of practicing medicine, except as a patient;
 - c. Advertise, by any means, or hold himself out as practicing or available to practice medicine.

DATE: 08/15/2021

Julie Cabos-Owen

JULIE CABOS-OWEN

Administrative Law Judge

Office of Administrative Hearings